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November 4, 2004

L. Ward Wagstaff, Esq.
Assistant Attorney General
Natural Resources Division
1594 West North Temple, #300
Salt Lake City, Utah 84116

Dear Ward,

Re: Distribution of Water in Cedar Creek drainage under Proposed Determination

I have been informed by Denise A. Dragoo, counsel for ANR Company, Inc. ("ANR") that, despite what occurred at the settlement meeting in Huntington-Cleveland Irrigation Company's ("Huntington-Cleveland") office on September 9, 2004, that ANR does not intend on making a settlement offer to resolve its dispute with the Proposed Determination. A copy of her letter confirming our conversation is enclosed. Accordingly, I am respectfully requesting on behalf of Huntington-Cleveland, that the State Engineer and his staff administer Cedar Creek according to the Proposed Determination issued by the State Engineer in the General Adjudication of the San Rafael drainage, as required by Utah Code Ann. § 73-4-11.

Specifically, Huntington-Cleveland requests the State Engineer do the following until such time, if ever, that the Proposed Determination or the Final Decree be revised or amended.

- 1) Prohibit any diversion by ANR of water flowing from the Mohrland portal until a verifiable measuring device is placed on the diversion works as required by Utah Code Ann § 73-5-4. (It is our belief that during 2004 the constant flow diverted from the Mohrland Mine Portal far exceeded the total of 101.92 acre-feet approved under Water Rights 91-316 and 91-251.)
- 2) Only allow diversion of water onto the so called Cedar Creek Ranch if (1) the owner of the Ranch requests and consents to such diversion; and (2) when a measuring device is installed on that diversion as required by Utah Code Ann. § 73-5-4, and thereafter; (3) only allow diversion during such times that H/C is receiving its full 10 cfs at its point of diversion on Cedar Creek under Water Right No. 93-1134. (Currently the owner of the Ranch has directed no water be diverted onto it.)

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ATTORNEY GENERAL
Natural Resources Division

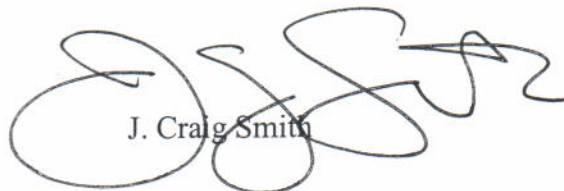
3) We are aware that ANR claims a right to divert 101.92 acre feet from the Mohrland Portal under Water Right Nos. 91-316 and 91-251, which are a Price River drainage rights. However, there are two reasons that such rights can only be satisfied when Huntington-Cleveland is receiving its full 10 cfs right under senior Water Right No. 93-1134. First, the Morhland portal rights have priorities of 1957 and 1961, which are junior to Huntington-Cleveland's Water Right No 93-1134 which has a priority of 1885. Although the rights are in different surface drainages, the very fact that such water is flowing by gravity out of the Mohrland portal and prior to Change Application No a6963, had to be pumped out of the King # 1 portal, demonstrates that the underground water in that area is naturally tributary to Cedar Creek. Second, Change Application No. a6963, which allowed the diversion of Water Right Nos. 91-316 and 91-251 out of the Mohrland portal was in response to Huntington-Cleveland's protest made specifically subject to all prior rights.

4) Even if the facts set forth in no. 3 above were not true, as you will recall ANR admitted at our meeting that beneficial use does not exist at the former town of Hiawatha, to support the 101.92acre feet of the right. As we are all well aware a water right is only as large as its beneficial Use. See Utah Code Ann. § 73-1-3.

Huntington-Cleveland is, as I am sure you and the State Engineer's office are, disappointed that ANR has chosen not to pursue a permanent settlement. Huntington-Cleveland believes that the law is very clear requiring that the Proposed Determination be followed. Please advise me in writing as to the course of action that the Attorney General's and State Engineer's offices are intending on taking in regards to the specific requests outlined above and enforcement of compliance by ANR.

Thank you for your attention to this request.

Yours truly,
SMITH HARTVIGSEN



J. Craig Smith

cc: Board of Directors, Huntington-Cleveland Irrigation Company
Dennis Ward, President
Sherrel Ward, Vice President
Kay Jensen, Secretary
Denise A. Dragoo
Mark Dykes